

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Atty. Docket: USHIJIMA=3

In re Application of:)	Conf. No.: 5702
)	
Toshihiro USHIJIMA et al)	Art Unit: 1645
)	
Appln. No.: 10/590,896)	Examiner: O. A. OGUNBIYI
)	
I.A. Filed: 02/08/2005)	Washington, D.C.
371(c): 08/28/2006)	
)	
For: PROCESS FOR PREPARING)	April 22, 2009
VARIANT OF ERYSIPELOTHRIX.)		

REPLY TO RESTRICTION REQUIREMENT

Honorable Commissioner for Patents
U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Amendment
Randolph Building, 401 Dulany Street
Alexandria, VA 22314

Sir:

The applicants are in receipt of the Office Action mailed March 23, 2009, entirely in the nature of a restriction requirement on the basis of purported lack of unity of invention. Applicants reply below.

First, however, applicants respectfully request the PTO to acknowledge receipt of applicants' papers filed under Section 119. Priority has been claimed and a certified copy of the Japanese priority application will have been forwarded to the PTO from the International Bureau of WIPO.

Restriction has been required among what the PTO deems as being four (4) separate inventions. As applicants must make an election even though the requirement is traversed, applicants hereby respectfully and provisionally elect Group II, presently claims 8-25, directed to a variant of *Erysipelothrix rhusiopathiae* surface protective antigen SpaA or a shortened form thereof, etc., with traverse and without prejudice.

The Office Action states that unity of invention is destroyed by the Imada et al publication, whereby the four groups lack the same or corresponding special technical features as required by PCT Rules 13.1 and 13.2. Applicants respectfully submit that the Imada publication falls short of showing or even making obvious the shared special technical features which exist throughout the four groups. Please note that the Imada publication is acknowledged prior art, noting page 4 of applicants' specification. Applicants further respectfully maintain that even if the Imada publication were applicable against the claims as presently pending, it would not be applicable against more narrow claims which share the same or corresponding special technical feature.

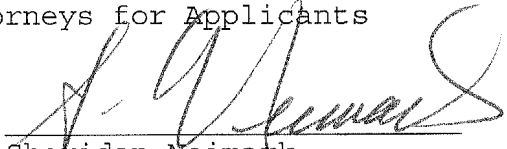
Appln. No. 10/590,896
Reply dated April 22, 2009
Reply to Office Action of March 23, 2009

As all of the applicants' claims meet the requirements of PCT Rules 13.1 and 13.2, whereby unity of invention exists, the requirement should be withdrawn, and such is respectfully requested.

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.
Attorneys for Applicants

By


Sheridan Neimark

Registration No. 20,520

SN:jnj

Telephone No.: (202) 628-5197

Facsimile No.: (202) 737-3528

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